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9 Attorneys for Plaintiff  
10 MELINDA MARTINEZ

11 *\*Defense Counsel Listed Below*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 MELINDA MARTINEZ,  
15  
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18 Plaintiff,

19 v.

20 SAFEWAY, INC. and NORTH  
21 NATOMAS TOWN CENTER, LLC,  
22  
23

24 Defendants

25 Case No. 3:19-cv-01477-EDL  
26 Civil Rights

27 **CONSENT DECREE AND ~~PROPOSED~~  
28 ORDER FOR INJUNCTIVE RELIEF FOR  
INJUNCTIVE RELIEF, DAMAGES, AND  
ATTORNEY FEES, LITIGATION  
EXPENSES, AND COSTS**

Action Filed: March 21, 2019

18 William Murphy, Esq. (SBN 82482)  
19 Dillingham & Murphy, LLP  
20 601 Montgomery Street, Suite 1900  
21 San Francisco, California 94111  
22 Phone: (415) 397-2700  
23 Fax: (415) 397-3300  
24 Email: wfm@dillinghammurphy.com

25 Attorney for Defendants  
26 SAFEWAY, INC. and NORTH NATOMAS TOWN CENTER, LLC  
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1 I. Plaintiff MELINDA MARTINEZ filed a Complaint in this action on March  
2 21, 2019, to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42  
3 U.S.C. §§ 12101 *et seq.*, and California civil rights laws and to obtain recovery of damages  
4 for discriminatory experiences, denial of access, and denial of civil rights against Defendants  
5 SAFEWAY, INC., and NORTH NATOMAS TOWN CENTER, LLC ("Defendants").  
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1 Plaintiff has alleged that Defendants violated Title III of the ADA; Sections 51, 52, 54, 54.1,  
2 54.3 and 55, of the California Civil Code, and Health and Safety Code §§ 19953 *et. seq.* by  
3 failing to provide full and equal access to users of the facilities located at 2851 Del Paso  
4 Road, Sacramento, California.  
5 2. In order to avoid the costs, expense, and uncertainty of protracted litigation,  
6 Plaintiff and Defendant SAFEWAY INC. (“Safeway”) (together sometimes the “Parties”)  
7 agree to entry of this Consent Decree and Order to resolve all claims regarding injunctive  
8 relief, damages, and attorneys’ fees, litigation expenses and costs, raised in the Complaint  
9 without the need for protracted litigation. Accordingly, the Parties agree to the entry of this  
10 Order without trial or further adjudication of any issues of fact or law concerning Plaintiff’s  
11 claims for relief.

12  
13 **JURISDICTION:**

14 3. The Parties to this Consent Decree and Order agree that the Court has  
15 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the  
16 Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.* and pursuant to  
17 supplemental jurisdiction for alleged violations of California Civil Code sections 51, 54, and  
18 54.1.

19 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the  
20 Court’s entry of this Consent Decree and Order, which provide as follows:  
21

22 **SETTLEMENT OF INJUNCTIVE RELIEF:**

23 4. This Order shall be a full, complete, and final disposition and settlement of  
24 Plaintiff’s claims against Defendants for injunctive relief that have arisen out of the subject  
25 Complaint.

26 5. The Parties agree and stipulate that the corrective work will be performed in  
27 compliance with the standards and specifications for disabled access as set forth in the  
28 California Code of Regulations, Title 24-2, and Americans with Disabilities Act Standards



1 for Accessible Design, unless other standards are specifically agreed to in this Consent  
2 Decree and Order.

3 a. **Physical Remedial Measures and Administrative Procedures:**

4 i. Safeway shall provide an van accessible parking space  
5 compliant with applicable accessible building codes.

6 ii. Safeway shall provide a marked accessible path of travel from  
7 the accessible parking space to the entrance of the gas station  
8 store that is at least 36” wide.

9 iii. Safeway shall provide an entrance door that is at least 32”  
10 wide.

11 iv. Safeway shall provide a transaction counter or a section of the  
12 transaction counter, which is no greater than 34” above the  
13 finished floor.

14 v. Safeway shall provide clear floor space in front of the  
15 transaction counter that provides the required 60” turn around  
16 space, or comparable code compliant turn around space.

17 b. **Policy Based Remedial Measures and Administrative Procedures:**

18 i. Safeway shall create and follow a policy of having staff assist  
19 persons with disabilities in retrieving items for purchase that  
20 cannot be places within reach. A sign explaining that policy  
21 shall be prominently displayed within the gas station store.

22 ii. Safeway shall create and follow a policy of never storing items  
23 in the access aisle next to the van accessible parking space, and  
24 keeping the path of travel leading from the accessible parking  
25 space to the store clear.

26 c. **Timing:** Safeway will complete each item on the schedule stated in  
27 this Consent Decree by July 31, 2019. In the event that unforeseen  
28 difficulties prevent Safeway from completing any of the agreed-upon

1 injunctive relief, Safeway or its counsel will notify Plaintiff's counsel  
2 in writing within seven (7) days of discovering the delay. Plaintiff will  
3 have thirty (30) days to investigate and meet and confer with Safeway  
4 and its counsel, and to approve the delay by stipulation or otherwise  
5 respond to Safeway's notice. If the Parties cannot reach agreement  
6 regarding the delay within that time period, Plaintiff may seek  
7 enforcement by the Court.

8 d. Safeway or defense counsel will notify Plaintiff's counsel when the  
9 corrective work is completed, and, whether completed or not, will  
10 provide a status report to Plaintiff's counsel no later than July 15,  
11 2019.

12 e. If Safeway fails to provide injunctive relief on the agreed upon  
13 timetable and/or fail to provide timely written status notification, and  
14 Plaintiff files a motion with the Court to obtain compliance with these  
15 terms, Plaintiff reserves the right to seek additional attorney's fees for  
16 any compliance work necessitated by Safeway's failure to keep this  
17 agreement. If the Parties disagree about Plaintiff's fees incurred for  
18 enforcement of this agreement, the parties agree to participate in a  
19 Magistrate Judge-conducted Settlement Conference for the purposes of  
20 resolving the disputed fees. If the Settlement Conference fails to  
21 resolve the fee dispute, Plaintiff may seek relief via motion for an  
22 order directing the Safeway to pay Plaintiff's counsel reasonably  
23 incurred fees and costs.  
24

25 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:**

26 6. Safeway agrees to pay Plaintiff a total of \$22,500 for Plaintiff's damages,  
27 attorney fees, litigation expenses and costs shall be paid by one check payable in the amount  
28 of \$22,500 to "REIN & CLEFTON IN TRUST MELINDA MARTINEZ" and delivered to



1 Plaintiff's counsel's office, located at 200 Lakeside Drive, Suite A, Oakland California, on or  
2 before May 15, 2019.

3  
4 **LIQUIDATED DAMAGES CLAUSE**

5 7. Time is of the essence for this agreement. Delay in payment to Plaintiff  
6 creates uncertainty for Plaintiff and Plaintiff's counsel in resolving this matter. In the case of  
7 Plaintiff's counsel, this may also mean spending time pursuing collections issues instead of  
8 representing disabled persons on other matters and advancing the public interest in making  
9 other sites accessible. In consideration of these issues, if Safeway does not pay both the  
10 attorney fees and damages contemplated in this Agreement on or before the date specified in  
11 this Agreement, Safeway agrees to pay \$250 per day for each day that payment is not  
12 received by Plaintiff. If enforcement of the monetary terms of this agreement becomes  
13 necessary, Safeway agrees that that damages incurred pursuant to this clause accumulate as  
14 part of and are incorporated in the settlement amount. They do not stop accumulating unless  
15 and until the entire settlement amount is received by Plaintiff, unless otherwise agreed by the  
16 parties in writing. Damages pursuant to this clause are recoverable by any motion to enforce  
17 this agreement, including but not limited to motions to enforce this clause, any motion for  
18 attorney fees in association with enforcement of this agreement, and/or enforcement of  
19 judgment entered by the Court.

20  
21 **ENTIRE CONSENT DECREE AND ORDER:**

22 8. This Consent Decree and Order constitute the entire agreement between the  
23 signing Parties on the matters of injunctive relief, damages, attorneys' fees, litigation  
24 expenses, and costs, and no other statement, promise, or agreement, either written or oral,  
25 made by any of the Parties or agents of any of the Parties that is not contained in this written  
26 Consent Decree and Order, shall be enforceable regarding the matters of injunctive relief  
27 described herein.  
28

1 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN**  
2 **INTEREST:**

3 9. This Consent Decree and Order shall be binding on Plaintiff, Defendants, and  
4 any successors-in-interest. Defendants have a duty to so notify all such successors-in-interest of  
5 the existence and terms of this Consent Decree and Order during the period of the Court's  
6 jurisdiction of this Consent Decree and Order.

7 10. Except for all obligations required in this Consent Decree and Order each of the  
8 Parties to this Consent Decree and Order, on behalf of each of their respective agents,  
9 representatives, predecessors, successors, heirs, partners, and assigns, releases and forever  
10 discharges each other Party and all officers, directors, shareholders, subsidiaries, joint venturers,  
11 stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs,  
12 predecessors, and representatives of each other Party, from all claims, demands, actions, and  
13 causes of action of whatever kind or nature, presently known or unknown, arising out of or in  
14 any way connected with the lawsuit.

15  
16 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

17 11. Each of the Parties to this Consent Decree and Order understands and agrees  
18 that there is a risk and possibility that, subsequent to the execution of this Consent Decree  
19 and Order, any or all of them will incur, suffer, or experience some further loss or damage  
20 with respect to the lawsuit that is unknown or unanticipated at the time this Consent Decree  
21 and Order is signed. Except for all obligations required in this Consent Decree and Order, the  
22 Parties intend that this Consent Decree and Order apply to all such further loss with respect  
23 to the lawsuit, except those caused by the Parties subsequent to the execution of this Consent  
24 Decree and Order. Therefore, except for all obligations required in this Consent Decree and  
25 Order, this Consent Decree and Order shall apply to and cover any and all claims, demands,  
26 actions, and causes of action by Defendants and the Parties to this Consent Decree with  
27 respect to the lawsuit, whether the same are known, unknown, or hereafter discovered or  
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1 ascertained, and the provisions of Section 1542 of the California Civil Code are hereby  
2 expressly waived. Section 1542 provides as follows:

3       **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
4       **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
5       **EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
6       **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**  
7       **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**  
8       **SETTLEMENT WITH THE DEBTOR.**

9       12. Except for all obligations required in this Consent Decree and Order each of  
10 the Parties to this Consent Decree and Order, on behalf of each, their respective agents,  
11 representatives, predecessors, successors, heirs, partners, and assigns, releases and forever  
12 discharges Defendants and each of them and each other Party and all officers, directors,  
13 shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies,  
14 employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives of  
15 each other Party, from all claims, demands, actions, and causes of action of whatever kind or  
16 nature, presently known or unknown, arising out of or in any way connected with the lawsuit.

17       **TERM OF THE CONSENT DECREE AND ORDER:**

18       13. This Consent Decree and Order shall be in full force and effect for a period of  
19 eighteen (18) months after the date of entry of this Consent Decree and Order by the Court.

20       **SEVERABILITY:**

21       14. If any term of this Consent Decree and Order is determined by any court to be  
22 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in  
23 full force and effect.

24       **SIGNATORIES BIND PARTIES:**

25       15. Signatories on the behalf of the Parties represent that they are authorized to  
26 bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be  
27 signed in counterparts and a facsimile signature shall have the same force and effect as an  
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original signature.

**END OF PAGE.  
SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END  
OF THE DOCUMENT.**

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1 Dated: 11, 2019

PLAINTIFF MELINDA MARTINEZ

Melinda Martinez  
MELINDA MARTINEZ

4 Dated: 5/13, 2019

SAFEWAY, INC.

By: [Signature]  
Printname: Elizabeth A. Thomas  
Title: Senior Corporate Counsel

10 Approved as to form:

11 Dated: 5/21, 2019

REIN & CLEFTON

[Signature]  
By: AARON M. CLEFTON, Esq.  
Attorneys for Plaintiff  
MELINDA MARTINEZ

16 Dated: May 8, 2019

DILLINCHAM & MURPHY, LLC

[Signature]  
By: WILLIAM MURPHY, ESQ.  
Attorneys for Defendants  
SAFEWAY, INC. and NORTH NATOMAS  
TOWN CENTER, LLC

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: May 23, 2019

  
Honorable Elizabeth D. Laporte  
U.S. Magistrate Judge